Supreme Court, U.S.
FILED

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(1)

**No.**

# In The Supreme Court of the United States

**DANIEL BARRON, Petitioner**

**v.**

**STATE OF CALIFORNIA, Respondent**

**On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division Six**

## PETITION FOR WRIT OF CERTIORARI

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Pacific Grove, California 93950
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34pgs

## QUESTIONS PRESENTED

1. May law enforcement officers detain a passenger in a vehicle to determine whether he is on probation without any individualized suspicion of criminal wrongdoing?

2. Do search terms imposed under California law purporting to permit a probation search without any individualized suspicion of wrongdoing violate the Fourth Amendment?

3. Does a probationer's acceptance of probation terms instead of a state prison sentence constitute a complete waiver of Fourth Amendment rights?

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## PETITION

Petitioner Daniel Barron respectfully prays that a writ of certiorari issue to review the decision of the California Court of Appeal, Second Appellate District, Division Six, affirming his conviction and the denial of his motion to suppress evidence pursuant to the Fourth Amendment to the United States Constitution.

## LIST OF PARTIES

The parties are as they appear in the caption.

## OPINION BELOW

The opinion of the California Court of Appeal, Second Appellate District, Division Six, is not published. A copy is attached as Appendix B. The California Supreme Court's order denying review on April 10, 2002 is attached as Appendix A. The order imposing sentence of the Superior Court of the State of California, County of Ventura, is attached as Appendix C.

## JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(a). The California Court of Appeal, Second District, Division Six, filed its opinion on January 17, 2002. The California Supreme Court filed its order denying review on April 10, 2002.

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to
>
> be search, and the persons or things

to be seized.

## STATE STATUTES INVOLVED

*California Penal Code* section 1538.5, subdivision (a)(1)(A):

> (a) (1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:
>
> (A) The search or seizure without a warrant was unreasonable....

## STATEMENT OF THE CASE

Petitioner, Daniel Barron, was a passenger in a car stopped for a traffic violation on September 15, 2000 by Deputy Javier Chavez of the Moorpark Police Department. *Reporter's Tran-*

*script* "RT" 15. While contacting the driver, Chavez noticed and recognized Barron from prior contacts, and believed he had active probation search terms for weapons and drugs. RT 16-17. Chavez ordered both Barron and the driver out of the car, and requested dispatch to run both the driver's name and Barron's name for warrants and probation. RT 17-18. Dispatch confirmed Barron's probation search term. RT 18. Chavez performed a pat-down search for weapons of Barron, which yielded nothing. Chavez then ordered Barron to removed his shoes and socks, whereupon a small quantity of cocaine fell out of Barron's left shoe. RT 18-21.

## HOW THE FEDERAL QUESTION WAS PRESENTED BELOW

Barron moved the trial court to suppress evidence pursuant to the Fourth Amendment of the Federal Constitution, according to the procedure provided for by state law in California Penal Code section 1538.5. *Clerk's Transcript,*

1-28, 40.

In ruling on Barron's motion to suppress, the trial court received testimony from the Moorpark Police Department Officer who performed the searched. CT 17-21. When the trial court denied his motion, Barron pled guilty to possession of a controlled substance.

## REASONS FOR GRANTING THE WRIT

The California Court of Appeal, Second District, Division Six has decided an important question of federal law that should be resolved by this Court. Specifically, the California Court of Appeal has concluded that a law enforcement officer may detain a passenger to determine whether he is on probation, and may further search that passenger without any individualized suspicion of criminal wrongdoing. Specifically, the issue in this case is one that this Court left unresolved in *United States v. Knights*, 534 U.S. 112, 122 S.Ct. 587, 592-593 fn. 6 (2001), to wit: whether the detention and search of a probationer, absent any showing of a particularized suspicion, violates the

reasonableness requirement of the Fourth Amendment.

The California Supreme Court was provided the opportunity to review petitioner's Fourth Amendment challenge to his conviction, and declined to do so.

Because the California courts continue to disregarded basic Fourth Amendment protections of probationers, Barron respectfully requests that this Court consider the issue in his case.

## I. THE FOURTH AMENDMENT DOES NOT PERMIT A SUSPICIONLESS SEARCH OF A PASSENGER WHO IS ON PROBATION.

In *People v. Reyes*, 4 Cal.4th at 743 (1998), the California Supreme Court in a 4-3 opinion overruled its earlier decision in *People v. Burgener*, 41 Cal.3d 505 (1986), and expanded and followed its decision in *In re Tyrell J.*, 8 Cal.4th 68 (1994). Noting that the United States Supreme Court has not yet decided the issue, the *Reyes* majority held that a warrantless search of a parolee's home need

not be justified by probable cause. *Id.* at 751-752. In reaching this conclusion, the Court explained that the *In re Tyrell J.* approach "seems preferable to the more rigid formulations of earlier cases." *People v. Reyes, supra,* 4 Cal.4th at 750.

In *Reyes,* then, the California Supreme Court held that a particularized suspicion is not required before a parole agent searches his parolee's residence for drugs. *People v. Reyes, supra,* 4 Cal.4th at 753. Instead, the Fourth Amendment protects parolees only from searches that are "arbitrary and capricious," that is a search motivated by illegitimate purpose, such as personal animosity. *In re Anthony S.*, 4 Cal.App.4th 1000, 1004 (1992) cited with approval in *People v. Reyes, supra,* 4 Cal.4th at 754. *Id.* at 753-754.

Here, the Court of Appeal adopted the California Supreme Court's arbitrary and capricious test, and pursuant to that test denied Barron's motion to suppress:

There is no evidence that appellant

> was stopped for arbitrary or capricious reasons or for purpose of harassment. Appendix A, page 4.

The Court of Appeal, relying on *People v. Reyes, supra,* 19 Cal.4th 751, specifically declined to impose a "particularized suspicion" requirement of any kind:

> Our Supreme Court has held that searches of parolees or probationers without any reasonable suspicion are lawful. [Citations.] The court has reasoned that an adult probationer, like appellant, consents to a waiver of his Fourth Amendment rights in exchange for the opportunity to avoid serving a state prison sentence. [Citation.] Appendix A, page 2-3.

More recently, in *United States v. Knights, supra,* this Court held that reasonable suspicion, rather than probable cause, was sufficient to support the search of a probationer's home for "investigatory" rather than "probationary" purposes. *United States v. Knights, supra,* 123 S. Ct. at 592, fn. 6. This Court declined to decide the broader issue of whether an investigatory search per-

formed absent any individualized suspicion would satisfy the reasonableness requirement of the Fourth Amendment. *Ibid.*

Fourth Amendment rights are triggered when there exists a reasonable expectation of privacy. As explained by the dissenting Justice Kennard in *Reyes, supra,* this Court "has never held that the Fourth Amendment to the federal Constitution permits warrantless, non-consensual government searches of private residences without at least reasonable suspicion." *People v. Reyes, supra,* 19 Cal.4th at 759. "Reasonable suspicion" means "specific and articulable facts" rather than "a mere inchoate and unparticularized suspicion or hunch." *Maryland v. Buie,* 494 U.S. 325 (1990).

Deputy Chavez here did not claim reasonable suspicion of criminal activity. Instead, he admittedly searched Barron without a particularized suspicion pursuant to probation search terms. Such a search does not satify the search and seizure protections of the Fourth Amendment as consistently interpreted by this Court.

## II. PROBATIONERS DO NOT WHOLLY WAIVE THEIR FOURTH AMENDMENT RIGHTS.

This Court has explained that although "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure...the Fourth Amendment imposes no irreducible requirement of such suspicion." *New Jersey v. T.L.O.*, 469 U.S. 325, 342, fn. 8 (1985). The measure of whether a search condition is constitutional is whether that condition is reasonable. It follow, then, that federal courts have continued to impose a Fourth Amendment reasonableness requirement in reviewing a search that has been conducted pursuant to a signed waiver, including a waiver in exchange for probation, or under a similar statutory scheme, regardless of whether the waiver permits a search "with or without reasonable suspicion." *See, e.g., United States v. Giannetta, supra,* 909 F.2d 571, 576, relying on *Griffin v. Wisconsin*, 483 U.S. 868 (1987).

Relying on the absence of law generated by this Court on the subject, the California Supreme Court holds that search terms permitting

law enforcement to search for any reason or for no reason are equally constitutionally permissible. California's only limitation is that a search may not be harassing or arbitrary. *People v. Reyes, supra,* 19 Cal.4th 743. In reaching this conclusion, the California Supreme Court makes no distinction between parolees and probationers. *Ibid.*

Most state courts, relying on the balancing test set forth by this Court in *Griffin v. Wisconsin, supra,* 433 U.S. 868, adopt a reasonable suspicion standard or, alternatively, a rule barring parole and probation officers from acting as agents of law enforcement, or both. *See People v. Reyes, supra,* 19 Cal.4th 762, Justice Kennard, dissenting. California's decision not to adhere to such a standard, and to permit searches in the absence of any particularized suspicion, has resulted in law enforcement's use of parole and probation search terms during routine traffic stops to search and detain not only the driver but also any passengers who may by chance be riding in the de-

tained vehicle. Barron contents that such a rule unreasonable permits random detention and fosters harassment by law enforcement of persons believed to be subject to probation terms. Such a search provision violates the bare minimum requirements of the Fourth Amendment.

## III. CONCLUSION.

For the reasons set forth herein, Barron respectfully requests that this Court accept review of his case, and that it reverse the decision of the California Court of Appeal.

DATED: July 8th, 2002

Respectfully submitted,

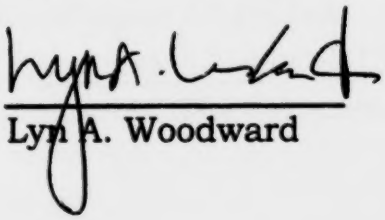
Lyn A. Woodward
Attorney at Law
309 Prescott Lane
Pacific Grove, California 93950
*Attorney for Petitioner*

## CERTIFICATE OF COMPLIANCE

This original brief is presented in proportionately-spaced12 point Roman typeface (Bookman Oldstyle). The lines are spaced at least 2 points from one another. There are no footnotes. Quotes greater than 50 words in length are indented.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of July, 2002, at Pacific Grove, California.



Lyn A. Woodward

Court of Appeal, Second Appellate District,
Division Six-No. B148489
**S104611**

**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

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**THE POEPLE, Plaintiff and Respondeont**

**v.**

**DANIEL BARRON, Defendant and Appellant**

**SUPREME COURT**
**FILED**
**APRIL - 10 2002**
**Frederick K. Ohlirich Clerk**
**Deputy**

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Petition for Review Denied.

George, C.J. was absent and did not participate.

NOT TO BE PUBLISHED

In the Court of Appeal of the State of California
Second Appellatre District
Division Six

THE POPLE
Plaintiff and Respondent,

v.

DANIEL BARRON,
Defendnat and Appellant.

2d Crim. No. B148489
(Super. Ct. No. 2000102189
(Ventura County)

COURT OF APPEAL-SECOND DIST.
FILED
JAN 17 2002
JOSEPH A. LANE, Clerk
Deputy Clerk

Daniel Barron pleaded guilty to possession of a controlled substance, (Health & Saf. Cide, Statute 11350, subd. (a).) The trial court suspended imposition of sentence and placed him on formal probation for 36 months on the condition, among others, that he serve 120 days in jail. Appellant contends the trial court erred in denying his motion to suppress evidence obtained during a warrantless search. We affirm.

*Factual and Procedural Background*

In September of 2000, Deputy Javier Chavez of the Moorpark Police Department initiated a traffic stop of a vehicle for failure to obey a stop sign,

Deputy Chaves saw appellant seated in the right fromt passenger seat of the vehicle, recognized him from prior contacts, and believed he was on probation with search terms for narcotics and weapons. Deputy Chavez asked appellant if he was still on probation and appellant replied that he was. The deputy confirmed with dispatch that appellant had active search terms for both weapons and drugs.

Although he did not suspect appellant of any criminal activity, Deputy Chavez advised appellant he was going to conduct a search pursuant to the terms of his probation. The deputy asked appellant to remove his shoes and a small quantity of cocaine fell out of his left shoe. Appellant was arrested and charges with possession of cocaine.

Appellant moved to suppress the evidence on the ground that the search leading to the cocaine violated his Fourth Amendment rights because it was not supported by reasonable suspicion that he had violated his probation by resuming criminal activity. The trial court denied the motion, reasoning that the search was carried out in a reasonable manner, the deputy was simply enforcing the terms of appellant's probation when the opportunity to do so presented itself, and there

was no harassment.

*Discussion*

Appellant contends the trial court erred in denying his motion to suppress. He argues the warrantless search was unlawful because it was not supported by reasonable suspicion that he was violating the terms of his probation. Alternatively, he argues the search was conducted in an arbitrary or unlawful manner because the officer detained him solely to check his probation status and search him if the search terms were still in effect. He argues the Fourth Amendment does not permit a detention of passengers to check for warrant and probation search terms. His contentions are without merit.

Our Supreme Court has held that searches of parolees or probationers without any reasonable suspicion are lawful. (*People v. Woods* (199) 21 Cal.4th 668, 675; *People v. Reyes* (1998) 19 Cal.4th 743, 751; *People v. Bravo* (1987) 43 Cal.3d 600, 607.) The court has reasoned that an adult probationer, like appellant, consents to a waiver of his Fouth Amendment rights in exchange for the opportunity to avoid serving a state prison sentence. (*Bravo*, at p. 608.) "`[W]hen [a] defendant in order to obtain probation specifically agree[s] to permit at any time a warrantless search

of his person, car and house, he voluntarily waive[s] whatever claim of privacy he might otherwise have had.'" (*Id.* At p. 607.) The consent is a complete waiver of Fourth Amendment rights, with the exception of the right to object to searches conducted for harassment or in an unreasonable manner. (*Ibid.*; see also *In re Tyrell J.* (1994) 8 Cal.4th 68,80 [juvenile probationer subject to a valid search condition has no reasonable expectation of privacy over his person or property]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1006 [same].)

Our Supreme Court has expressly declined to hold that a probationer's consent to a waiver of Fourth Amendment rights must be limited to searches conducted upon reasonable suspicion. (*People v. Reyes, supra,* 19 Cal.4th at pp. 750-752; *People v. Woods, supra,* 21 Cal.4th at p. 675; *People v. Bravo, supra,* 43 Cal.3dat p. 607.) As the court in *Reyes* explained, "When involuntary search conditions are properly imposed, reasonable suspicion is no longer a prerequisite to conducting a search of the subject's person or property. Such a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious, or harassing." (*Reyes,* at p. 752.)The observed goal is to discourage recidivism by let-

ting probationers know they can be searched at any time without cause and to ascertain compliance with the terms of probation. (*Ibid.*)

Here, appellant was subject to a consent to search term as a condition of his probation when Deputy Chavez stopped the vehicle. Appellant, therefore, had no reasonable expectation of privacy at the time he was searched, and the officer was not required to have any particularized suspicion of criminal activity in order to search him. There is no evidence in the record that appellant was stopped for arbitrary or capricious reasons or for purposes of harassment. (See *People v. Reyes, supra,* 19 Cal.4th at pp. 753-745 [parole search could become constitutionally unreasonable if made too often, at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressove conduct by the searching officer].) The deputy stopped the car in which appellant was riding because he witnessed a Vehicle Code violation.

We reject appellant's contention that his Fourth Amendment rights were violated because he was detained for no reason while the officer checked his probation status. Upon stopping the vehicle, the deputy recognized appellant and remembered he was on probation for narcotics and

weapons violations. He verified this fact with appellant. Although he could have searched appellant immediately at this point, he confirmed his probation status with dispatch before actually commencing the search. It would thward the purposes of the exlusionary rule to suppress tha evidence and penalize the deputy for the brief delay that occurred while he took this extra step. The purpose of the exclusionary rule is to deter police misconduct. (*In re Tyrell J.*, supra, 8 Cal4th at p. 89.) Here, the deputy ensured that appellant's search terms were still in effect before commencing to search him. The search that followed was not unreasonably prolonged, and the conduct of the deputy was neither arbitrary, capricious, nor harassing.

We also reject appellant's contention that the federal Constitution requires, at a minimum, that officers have a reasonable suspicion of criminal activity before they may lawfully search a probationer. *United States v. Knights* (Dec. 10, 2001, No. 00-1260) __ U.S. ___[2001 D.A.R. 12759] is not helpful to appellant. There, the Supreme Court held that a warrantless probation search supported by reasonable suspicion satisfied the Fourth Amendment. The court expressly declined to address the constitutionality of a "suspicionless

search" because the search before it was supported by reasonable suspicion. (*Id.* at p. __, fn. 6.) Similarly, in *Griffin v. Wisconsin* (1987) 483 U.S. 868, 873-874, the Supreme Court uphels a warrantless probation search conducted pursuant to a valid state regulation authorizing such searches when supervisory approval was first obtained and reasonable ground existed to believe that contraband would be found. *Griffin* did not address the question whether reasonable suspicion is required by the Fourth Amendment before a warrantless search may be made pursuant to a probation condition.

Finally, the federal circuit court decisions appellant cites are contrary to our Supreme Court decisions in *Reyes, Woods, and Bravo*, and are not controlling. (E.g., *United States v. Giannetta* (1st Cir. 1990) 909 F.2d 571, 576 [probation search properly conducted with reasonable suspicion]; *Toomey v. Bunnell* (9th Cir. 1990) 898 F. 2d 741, 744 [parole search may be conducted with reasonable suspicion].) We must follow the decisions of our Supreme Court (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF VENTURA

# MINUTE ORDER REPORT

Case Number 2000102189 People v. Barron, Daniel

Violations

| Cnt | S/A Off Lvl | Plea | Dt Plea | Disposition | Dt Dispo | Bail Amt |
|---|---|---|---|---|---|---|
| 1 | F 11350(a) HS Possession Of A Controlled Substance | Not Guilty | 09/19/00 | | | $10,000.00 |

Fiscal

| Component | Due | Balance |
|---|---|---|
| Fines/PA | $.00 | $.00 |
| Case Total: | $.00 | $.00 |

| Docket Dt | Seq | Code | Text |
|---|---|---|---|
| 10/03/2000 | 1 | HHELD | PRELIMINARY EXAMINATION Heard in Court-room 11 on Oct 03,2000 at 09:00 AM |

| | | |
|---|---|---|
| 2 | OFJUD | Judge Gutierrez, Arturo F. |
| 3 | OFJA | Judicial Assistant—Lagana, Martha M. |
| 4 | OFREP | Court Reporter, Cress, Rhonda is present. |
| 5 | PP | The defendant is present. |
| 6 | PPDA | Deputy District Attorney C. Jenson is present. |
| 7 | PPD | Public Defender M. Wolter is present in court. |
| 8 | TRAS | This case is assigned to Courtroom 47. |
| 9 | FL170 | 170.6 Motion filed against Judge McGrath |
| 10 | TRAS | The case is assigned to Courtroom 47. |
| 11 | CLASG | Case assigned to Courtroom 45 for PRELIMIARY EXAMINATION to begin 10/03/00 at 09:00 AM. |
| 12 | BLBBC | Court orders bail bond continued. |
| 13 | BLOTA | The Court orders you to appear. |
| 14 | HHELD | PRELIMINARY EXAMI |

| | | |
|---|---|---|
| | | NATION Heard in Court-room 45 on Oct 03,2000 at 09:00 AM |
| 15 | OFJUD | Judge Cloninger, James P. |
| 16 | OFJA | Judicial Assisant—Martin, Robert A. |
| 17 | PP | The defendant is present. |
| 18 | PTDEF | Attorney of record Wolter, Martha, for defendant. |
| 19 | PPDA | Deputy District Attorney Chrystina Jensen is present. |
| 20 | FCFREE | Following arguent, court delines to make a ruling regarding late filings in behalf of the defense |
| 21 | PTPE | The Preliminary Hearing Comences |
| 22 | MOCM1 | The court is in session, all the parties are present, the 1538.5 PC moion commences |
| 23 | TRWIT | People's witness Javier Chavez is sworn and testiies. |
| 24 | EXMRK | People's exhibit |

| | | |
|---|---|---|
| | | #1 is marked for identification. |
| 25 | TRWID | The witness identifies the defendant. |
| 26 | TRCROSS | Cross-Examination of the Witness Commences. |
| 27 | TRWE | The witness is excused. |
| 28 | PTSTIP | For purposes of the Preliminary Hearing only, the parties stipulate to the following: That the substance removed from the defendant's shoe was tested by the Ventura County Sheriff's Crime Lab and was found to be a controlled substance. |
| 29 | EXRCD | People's Exhibit |

| | | |
|---|---|---|
| | | #1 is receivedinto evidence |
| 30 | TRREST | People rest. |
| 31 | TRUN | The matter before the court is uncontested. |
| 32 | FCFREE | Argument by counsel. |
| 33 | FCFREE | Motion pursuant to 1538.5 PC is denied. |
| 34 | PTHTA | The defendant is held to answer to Superior Court on 10/17/00 at 01:30 PM in Courtroom 11 for arraignment on an information. |
| 35 | PTHTAF | The court orders The Complaint and Order holding the Defendant to Answer, after Preliminary Hearing, be filed. |
| 36 | PTSTIP | For purposes of the Preliminary Hearing only, the parties stipulate to the following: That People's Exhibit 1 may be returned to the people. |

| | | |
|---|---|---|
| 37 | BLOTA | The court orders you to appear. |
| 38 | BLBBC | Court orders bail bond continued. |